IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Tr.P(Crl.).No. 75 of 2007()

CC.533/2005 of J.M.F.C.-II,TRIVANDRUM

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PETITIONER: COUNTER PETITIONER/ACCUSED:

C.C.THOMAS, S/O. CHANDY PILLAI,
FLAT NO.18, THILAK NAGAR, CHIRAMMANNIL,
PAROTTUKONAM, NALANCHIRA, THIRUVANANTHAPURAM,

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.PRABHU VIJAYAKUMAR
SRI.SHAJIN S.HAMEED

RESPONDENTS: ACCUSED/COUNTER PETITIONER:

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. JOSE PAUL,
FLAT NO.G-2/1, HEERAKINARA APARTMENTS,
KESAVADASAPURAM, ULLOOR, THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR ADV.SRI.M.S.BREEZ

THIS TRANSFER PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Tr.P.(Crl). No. 75 Of 2007

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Dated this the 3rd day of October, 2007

ORDER

The petitioner is the sole accused in S.C.No.1257/2005 pending before the First Additional Assistant Sessions Court, Trivandrum. He is the de facto complainant in C.C.No.533/2005 pending before the Judicial First Class Magistrate Court – II, Trivandrum. According to the petitioner these cases are in the nature of a case and counter case. The petitioner had appeared before the learned Sessions Judge and had prayed for a direction to transfer C.C.No.533/2005 to the Sessions Court. The learned Sessions Judge by order dated 25.05.07 in Crl.M.P (TP) No.1145/2007 had dismissed the petition with the observation that it is for the petitioner to make a representation before the concerned Magistrate Court to invoke Secion 323 Cr.P.C to commit the case pending before that court to the Sessions Court.

2. That order was passed on 25.5.07. No application, so far, has been filed before the learned Magistrate. The sessions case has been listed to 5.10.07 and the petitioner has now rushed to this Court with a prayer that the order passed in Crl.M.P(TP) No.1145/2007 may be set aside and appropriate directions issued.

3. It is certainly for the petitioner to move the learned

Magistrate with the plea that the cases are in the nature of a case and counter case. If the learned Magistrate is satisfied that cases are in the nature of a case and counter case, the learned Magistrate must commit the case to the Sessions Court. At any rate, I am satisfied that no directions need be issued in the matter now. There can be no question of this Court directing transfer of a case pending before the Judicial First Class Magistrate Court – II, Trivandrum to the First Additional Assistant Sessions Court. The Sessions Court under Sec.193 Cr.P.C. can take cognizance only when there is a proper order of committal . It is for the petitioner to move the Court to get the case committed, if on merits it deserves to be committed.

In these circumstances, the transfer petition is dismissed with the above observations.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE